The result is that the appellant's claim to forfeiture must succeed unless the respondent company can and should be released in equity against the appellant's legal rights.

In the course of the argument, counsel for the respondent company applied for the first time to us for relief against forfeiture by invoking the provisions of section 237 of the National Land Code. That section is reproduced and reads:

"237. (1) Any lessee, sub-lessee or tenant against whom any person or body is proceeding to enforce a forfeiture may apply to the court for relief against the forfeiture: and the court —

(a) may grant or refuse relief as it thinks fit, having regard to all the circumstances of the case (including, if the case is one to which the provisions of section 235 applied, the proceedings and conduct of the parties under that section); and

(b) if it grants relief, may do so on such terms as it thinks fit.

(2) The provisions of sub-section (1) shall have effect notwithstanding any provision to the contrary in the lease, sublease or tenancy in question."

That section which was obviously modelled on the provisions of section 14 of the (U.K.) Conveyancing and Law of Property Act, 1881 (see also section 146 of the (U.K.) Law of Property Act, 1925), has been judicially considered in the Privy Council case of *Lam Kee Ying Sdn. Bhd.* v. *Lam Shes Tong & Anor.*[6] and it certainly supports the proposition that the respondent company is not debarred from making the application for relief for the first time in this court. The point is whether this court ought to relieve the respondent company in the circumstances. It has been said that the court's discretion to grant relief against forfeiture is very wide, and the House of Lords in *Hyman* v. *Rose, supra,* has refused to lay down any rigid rules to fetter it. Although there has been a fluctuation of authority on the subject, I think it is safe to state that as a general rule a court will consider the conduct of the parties, the nature and gravity of the breach and all the circumstances in deciding whether relief should be granted and, if so, on what terms. Evidence has been established that this is a case of clear and wilful breach of an express condition of the lease coupled with a lack of evidence as to the respondent company's ability speedily and adequately to make good the consequences of its default, although the respondent company was given reasonable time on two occasions to remedy it. As a matter of fact, the appellant has done everything possible under the Code to request the respondent company to remedy it. It cannot now be said that he has acted unreasonably in the circumstances. In my opinion, this is also a case of continuous disregard by the respondent company of the appellant's rights over a period of time. Equity expects men of business to carry out their obligations and the settled practice of courts of equity is to do what they can to preserve the sanctity of the bargain. We would indeed be acting flatly contrary to the salutary observation of Lord Uthwatt in *Winter Garden Theatre (London), Ltd.* v. *Millennium Productions, Ltd.*[7] that "in a court of equity, wrongful acts are no passport to favour". I do not think that this court should assist the respondent company who has shown *prima facie* to have trodden roughshod over the appellant's rights.

In the circumstances we allowed the appeal and dismissed the application for relief against forfeiture.

The following Supplementary Judgment was delivered on January 5, 1978:

Raja Azlan Shah F.J.: I have again considered the matter with regard to the application for relief from forfeiture under section 237 of the National Land Code made by the respondent company and I feel that it is misconceived.

Section 237 is referable to Part 15 which deals with leases and tenancies and section 221 refers to leases granted by the proprietor of alienated land. Lease is defined in section 5 to mean a registered lease. This is not the case here as in these proceedings we are dealing with alienation of State Land by the State Authority for a term of 60 years under section 76.

In my view, action to enforce forfeiture in respect of State alienation for a term of years comes under section 129 and *not* under section 234 *et seq* which is within Chapter 3 of Part 15. In the present case the forfeiture provisions under Part 8 would accordingly be applicable, and there is no provision for relief from forfeiture by the court. Section 133 provides for the aggrieved person to apply to the State Authority for annulment of the forfeiture and section 134 prescribes for appeals against forfeiture.

In the circumstances I do not think that this court has jurisdiction to entertain the application made by the respondent company under section 237. It is important to set this matter right as I do not wish that similar applications should be made in the future.

Gill C.J. (Malaya) and **Ong Hock Sim F.J.** concurred.

Appeal allowed.

Solicitors: *Chua Bros.*

T.N. NATHAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Gunn Chit Tuan J.) April 12, 1977]
[Penang — Criminal Appeal No. 116 of 1976]

Criminal Law and Procedure — Appeal — Delay of grounds of decision — Evidence of corroboration — Re-trial.

The appellant was convicted of an offence under section 4(a) of the Prevention of Corruption Act, 1961. The retrial started on June 13, 1972 and was carried on for seventy-seven days over a period of fourteen months. It was concluded on August 20, 1973 and on August 29, 1973 the appellant filed his notice of appeal. But the grounds of decision dated July 20, 1974 were not supplied to counsel until July 2, 1976.

Held: (1) the delay of another two years before receiving the grounds of decision was most unsatisfactory and has prejudiced the appellant;

(2) in this case as the accomplice could not be considered a reliable or credible witness the question of corroboration did not arise;

(3) in all the circumstances it was unsafe to convict the appellant on the uncorroborated evidence of the accomplice and therefore the appeal must be allowed.

[**Editorial Note:** This case is a sequel to *Nathan* v. *Public Prosecutor* [1972] 2 M.L.J. 101.]

Cases referred to:-

(1) *Chia Han Kiat* v. *Rex* [1937] M.L.J. Rep. 248, 251.
(2) *Voon Chin Fatt* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 131, 133.
(3) *Rex* v. *Lim Yam Hong* 14 S.S.L.R. 152, 167.
(4) *Mohamed bin Kasdi* v. *Public Prosecutor* [1969] 1 M.L.J. 135, 136.
(5) *Mahadeo* v. *R.* [1936] 2 All E.R. 813, 818.
(6) *Tengku Mahmood* v. *Public Prosecutor* [1974] 1 M.L.J. 110.
(7) *J.H.A. Trowell* v. *Public Prosecutor* [1946] M.L.J. (F.M.S.R.) 41, 42.
(8) *Rex* v. *Ambler* [1938] 2 W.W.R. 225.
(9) *Rameshwar* v. *State of Rajasthan* A.I.R. 1952 S.C. 54, 57.
(10) *Balasingham* v. *Public Prosecutor* [1959] M.L.J. 193, 194.
(11) *Wong Kok Wah* v. *Regina* [1955] M.L.J. 46, 47.
(12) *Sarwan Singh* v. *State of Punjab* A.I.R. 1957 S.C. 637, 641.
(13) *Director of Public Prosecutions* v. *Kilbourne* [1973] 1 All E.R. 440, 452.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. (*K. Kumaraendran* with him) for the appellant/respondent.

Mohammed Adnan bin Datuk Shuaib (Senior Federal Counsel) for the respondent/appellant.

Gunn Chit Tuan J.: The appellant in this appeal was retried in the Sessions Court, Penang for an offence under section 4(a) of the Prevention of Corruption Act, No. 42 of 1961. The charge against him read as follows: —

"That you on the 29th day of September, 1966, at the office of the Port Labour Board, in Georgetown, in the District of Georgetown, in the State of Penang, being an agent of the Port Labour Board, to wit, General Manager of the said Board, did corruptly agree to accept for yourself from Manickavasagam s/o Shanmugam, Branch Manager of the Indian Trade and General Insurance Co. Ltd., a gratification, to wit, 20% commission of the premiums paid by the Board to the said Company as an inducement of (sic) doing an act in relation to your principal's affairs, to wit, awarding the Workmen's Compensation Policy to the aforesaid Insurance Company and thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act No. 42 of 1961."

He was convicted and sentenced to imprisonment for one day and a fine of $5,000 in default one year's imprisonment. He appealed against the conviction and the Public Prosecutor appealed against the inadequacy of sentence.

For this appeal I do not think it will serve any purpose to set out the evidence in detail. Briefly it is only necessary to state that the prosecution sought to prove that the appellant, whilst he was General Manager of the Port Labour Board, agreed to accept from one Manickavasagam s/o Shanmugam, 20% commission on premiums paid in respect of a Workmen's Compensation Policy by the said Board to the Indian Trade and General Insurance Co. Ltd.

There were eighteen grounds of appeal in the Petition of Appeal filed by the appellant but his counsel, Mr. Edgar Joseph Jr., indicated that the first twelve grounds were all concerned with the main question to be considered in this appeal and that is whether on the records, as it stands, the learned President was right in accepting the said Manickavasagam, the complainant who is an accomplice in this case, as a witness of truth and thereafter in convicting the appellant on the uncorroborated evidence of that accomplice.

Before proceeding to consider the main question, I think it would be convenient for me to deal with one of the other grounds of appeal, namely, that the delay in delivering the learned President's grounds of decision was unsatisfactory and has prejudiced the appellant. The retrial started on June 13, 1972 and was carried on for seventy-seven days over a period of fourteen months. It was concluded on August 20, 1973, and on August 29, 1973, the appellant filed his notice of appeal. But the grounds of decision dated July 20, 1974 were not supplied to counsel until July 2, 1976, that is, nearly three years after the appellant's conviction!

Trials before Presidents and Magistrates are meant to be summary trials under the Criminal Procedure Code and to my mind the interests of justice would not be served if trials in the subordinate courts are allowed to continue for many days spread over a long period of time. As it was in this case, a mass of evidence, both admissible and inadmissible, was allowed to creep in so much so that one could hardly see the wood for the trees. It is appreciated that the courts do not have the conduct of the prosecution case or that of the defence, but it would, in my opinion, help to keep out irrelevant evidence and to speed up the hearing of cases in the lower courts if Presidents and Magistrates would at appropriate times during a summary trial ask the prosecuting officer or defence counsel to indicate the relevancy of any evidence which it is proposed to adduce.

After recording over six hundred pages of evidence spread over a period of more than a year, one can understand why some time was required to write the grounds of decision. But after a period of eleven months from the date of conclusion of the trial, it was doubtful if the learned President could have remembered the impression which witnesses made upon him. It was held by Terrell Ag. C.J. in *Chia Han Kiat* v *Rex*[1] that where judgment was not given until nearly six months later, an appellate court would in such circumstances be in an equally good position to weigh the evidence as the learned District Judge himself. In that case the learned District Judge had expressly stated that it was difficult, after many months, to remember the impression which the witness had made upon him. In the case of *Voon Chin Fatt* v. *Public Prosecutor*,[2] the appellate court had no means of discovering whether the delay was in writing the grounds of decision or in despatching them, but Spenser Wilkinson J. had this to say about it: —

"The interval between notice of appeal and delivery of grounds of decision should, in such a case, be a matter of days, not weeks, much less months. Indeed there is a very good reason from the Magistrate's point of view why grounds of decision should always be written as promptly as possible. The sooner, after hearing the witnesses the grounds of decision are written the clearer in the mind of the Magistrate who writes them will be all the details of the evidence, the demeanour of the witnesses and the general atmosphere of the case. Where delay occurs, not only have important details

faded from the mind of the Magistrate who tried the case, but also additional work is involved as the whole case has to be studied afresh in order to bring the matter back to mind. In my opinion, the fact that no time limit is laid down by law for giving grounds of decision increases the responsibility of Judges and Magistrates to see that no undue delay occurs and that the spirit of the law rather than its letter is complied with."

In the above-quoted case, the learned District Judge did not acknowledge the difficulty of remembering the impression which witnesses had made upon him, but the appellate court nevertheless held that the long delay of two years in delivering the grounds of judgment was unsatisfactory and had prejudiced the appellant in the appeal because in writing grounds of judgment so long after the hearing it is possible that the learned District Judge may have omitted to state something in those grounds which might have been favourable to the appellant. In the present case, I regret to note that a summary trial under the provisions of the Criminal Procedure Code had to take so long to complete and that the judgment was not signed until eleven months after conclusion of the trial. Moreover, the further delay of another two years before receiving the grounds of decision was most unsatisfactory and has prejudiced the appellant.

As regards the main question in this appeal, namely, whether the learned President was right in accepting Manickavasagam as a witness of truth and in convicting the appellant on the uncorroborated evidence of that accomplice, his counsel has left no stone unturned. Firstly, he referred me to the evidence which showed the character of that witness who, amongst other acts, admitted that he had prepared false vouchers to be signed by two persons, Karim and Shanmugam, who were called as prosecution witnesses. Manickavasagam also admitted in examination-in-chief that he had submitted false income tax returns in respect of one Hamid and the said Karim. He stated that he was aware that declaring one person's income under two persons' names was an income tax offence. There were false entries in the insurance company's cash payment book and Manickavasagam said again in examination-in-chief that he was fully aware that the relevant entries were false and that he had exercised supervision of those entries which he had certified as correct in the original copy of the entries which was sent to the company's headquarters in India. Apart from other instances of dereliction of duty on his part, Manickavasagam also admitted under cross-examination that he had told deliberate lies to the Anti-Corruption Agency officers on February 17 and 18, 1970, although he knew he was under a duty to speak the truth. He also admitted that he would tell lies to protect himself and even asked others, namely, the said Karim and Shanmugam, to tell lies to the A.C.A. about commissions received by them.

Manickavasagam was also cross-examined about a claim he had made for reimbursement of entertainment expenses incurred by him. When he made the claim he informed his principal in India that the expenses were incurred in securing the Penang Labour Board's Workmen's Compensation Policy. But at the trial he admitted that the claim was a false one and that it was definitely not the appellant nor Naidu, a former State Commissioner of Labour and one of the prosecution witnesses, whom he had entertained in connection with that claim. There were other instances in the evidence which showed that this witness could hardly be described as one of "high character" justifying a departure from the normal rule that the evidence of an accomplice requires corroboration. In the case of *Rex* v. *Lim Yam Hong*,[3] Whitley J. had suggested that a particular case would be of an exceptional nature justifying departure from the normal rule if the accomplice was a person of high character and the offence was one which did not carry with it any serious moral stigma. As I have stated earlier, the accomplice in this case could not be said to be of high character and the offence of corruption is undoubtedly one which carries with it a serious moral stigma.

There were many instances of contradictions on material points in the evidence of Manickavasagam at the retrial. There were also contradictions between his evidence at the first trial and the evidence at the retrial, and at one stage of the proceedings the learned President had to ask him to speak the truth and he then admitted having made five false statements at the original trial whilst he was on oath. Again there were numerous contradictions on material points between Manickavasagam's evidence and that of the other prosecution witnesses. With all those contradictory statements which differed in material particulars, the learned President should have held that there were grounds for believing that the accomplice was not a truthful witness (see *Mohamed bin Kasdi* v. *Public Prosecutor*[4]). After reading and considering the six hundred odd pages of recorded evidence, I formed the impression and came to the conclusion that Manickavasagam, to use the words of Sir Sidney Rowlatt in the Privy Council case of *Mahadeo* v. *R.*,[5] "belonged to a class of persons who are at the best not reliable witnesses".

It is true the learned President had a great advantage of seeing and hearing the witnesses whereas an appellate court has to rely on the recorded evidence. But again, to quote the words of Raja Azlan Shah F.J. in the case of *Tengku Mahmood* v. *Public Prosecutor*,[6] "a judge of fact should always test the complainant's evidence against the totality of his evidence and the probabilities of the case". Having read the judgment of the lower court, I find that the learned President did not even consider the demeanour of the witnesses nor has he made any microscopic examination of the totality of Manickavasagam's evidence or considered the numerous contradictions in his evidence. He has also not tested Manickavasagam's evidence against the evidence of the other witnesses before deciding to accept his evidence as reliable. I therefore considered the whole matter afresh and checked by critical examination the whole of the evidence, and whilst agreeing with the learned President's findings that Manickavasagam had contradicted himself and lied, I disagree with him on his conclusion of credibility and find that the contradictions in the witness's evidence were on material points.

Manickavasagam was undoubtedly an accomplice in this case and a court may presume that he is un-

worthy of credit unless he is corroborated in material particulars. Although under section 133 of our Evidence Act, 1950, a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, yet it was held by Horne J. in the case of *J.H.A. Trowell* v. *Public Prosecutor*[7] that a Magistrate's grounds of decision must show that he "convicted with an appreciation of the danger of so doing". In his judgment, Horne J. quoted a passage from a Canadian Court of Appeal decision, *Rex* v. *Ambier*[8] and I quote below the summary in the English and Empire 1940 Digest Supplement, page 48, to show that only in a very exceptional case may a trial judge convict upon the uncorroborated evidence of an accomplice and also where the judgment is not otherwise objectionable. The summary is as follows:—

"In all cases wherein corroborative evidence of the description dealt with in *Rex* v. *Baskerville*, [1916] 2 K.B. 658, is required and the trial is by a judge sitting without a jury, a conviction made on the uncorroborated evidence of an accomplice, without an accompanying statement being made by the judge showing that he convicted with an appreciation of the danger of so doing, should be set aside. If he sees fit to convict in the face of the admonition of courts past and present as to the danger of convicting upon the uncorroborated evidence of an accomplice he is at liberty to do so and his conviction will stand, provided he shows that the danger of so doing is present to his mind and the judgment is not otherwise objectionable. There may be a case in which a trial judge may fittingly convict upon the uncorroborated evidence of an accomplice, but this would be the very exceptional case."

In this case, the learned President in his grounds of decision said that this case was exceptional but he did not explain and give his reasons in his judgment to show why he considered the case an exceptional one. His so-called reasons in his grounds of decision were in fact mere conclusions. The simple *ipse dixit* of the learned President is not sufficient to constitute proper grounds of judgment. Thus it was pointed out in the Indian Supreme Court case of *Rameshwar* v. *State of Rajasthan*[9] that:

"The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a judge without the aid of a jury. In these cases, it is necessary that the judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case."

Unfortunately the learned President in this case although he had warned himself, he did not set out any reasons why he believed Manickavasagam and disbelieved the accused, thereby raising doubts as to the possibility that such vital consideration as the weight of evidence and the probabilities of the case may not have influenced his mental process in arriving at the ultimate finding (see *Balasingham* v. *Public Prosecutor*[10]). In any case, I respectfully agree with the following "dictum" of Spenser Wilkinson J. in the case of *Wong Kok Wah* v. *Regina*[11] where His Lordship said as follows:

"Whilst there is some conflict of judicial authority as to the extent to which it is necessary for Magistrates to give reasons for believing or disbelieving witnesses I am of opinion that in the case of an accomplice a Magistrate should give definite reasons for believing an accomplice without corroboration."

As the learned President had found that Manickavasagam was an accomplice and that there was no evidence of corroboration of his evidence, he should have stated his reasons for believing him and showed why he considered it safe to convict the appellant without corroboration in this particular case. Here was an accomplice whose evidence left much to be desired. There were reasons why he wanted to save his own skin by giving evidence against the appellant and this was surely not an exceptional case where the accomplice was one of high character and that therefore it was safe to convict an accused person without corroboration. The failure to make a critical examination of the accomplice's evidence was itself a serious misdirection and was sufficient to make the judgment unsatisfactory.

The learned Deputy Public Prosecutor who appeared in this appeal but who did not conduct the prosecution in the court below quite correctly conceded before me that the prosecution's case depended on whether the court accepted Manickavasagam, the accomplice, as a reliable witness and whether the appellant in this case could safely be convicted on the accomplice's evidence alone. I have stated above why Manickavasagam could not be considered a reliable witness. It was common ground that he was an accomplice and that there was no corroboration of his testimony. Even if there was corroboration, the evidence of the accomplice in this case could not be corroborated because he was not a credible or reliable witness. Thus it was held by the Supreme Court of India in the case of *Sarwan Singh* v. *State of Punjab*[12] that —

"... before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered.

In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver."

Lord Hailsham has expressed a similar opinion in the English House of Lord's case of *Director of Public Prosecutions* v. *Kilbourne*[13] when he said as follows:—

"Corroboration is only required or afforded if the witness requiring corroboration or giving it is otherwise credible, If his evidence is not credible, a witness's testimony should be rejected and the accused acquitted, even if there could be found evidence capable of being corroboration in other testimony. Corroboration can only be afforded to or by a witness who is otherwise to be believed. If a witness's testimony falls of its own inanition the question of his needing, or being capable of giving, corroboration does not arise."

In our case, as the accomplice could not be considered a reliable or credible witness, the question of corroboration therefore did not arise.

I have come to the conclusion that as there were a number of other unsatisfactory matters, I should not nor would the ends of justice require that I order a retrial, especially in this case where the appellant has already been retried and put to considerable expense and worry for an offence alleged to have been committed by him on September 29, 1966, that is,

more than 10 years ago. In the words of Roman lawyers, *"Interest reipublicae ut sit finis litium"*.

I have also examined this case in its proper perspective and consider that in all the circumstances of this case it was unsafe to convict the appellant upon the uncorroborated evidence of the accomplice and for the reasons above I allow the appeal and set aside the conviction and sentence.

The cross-appeal is dismissed. The fine of $5,000 is to be refunded to the appellant.

Appeal allowed.

Solicitors: *Kumar, Chan & Chia.*

CHIN KIM CHANG v. MARIADASS & ANOR.

[O.C.J. (Chang Min Tat J.) April 19, 1977]
[Kuala Lumpur — Originating Motion No. 49 of 1975]

Employment — Domestic servants, — Guest house — Employment Ordinance 1955, s. 69.

The respondents who were husband and wife first came into the employment of the appellant firm in answer to an advertisement for a cook and amah at a guest-house for the firm. They were interviewed by a Mr. and Mrs. Davies. Mr. Davies was then a financial controller of the firm and both of them with their three children were staying in the said guest-house. After the Davies the occupants of the house were transient guests, but they were all employees of the firm. The guests however had to pay for the food and drinks consumed by them at fixed rates. The Assistant Commissioner of Labour had allowed the respondents' claim in full for overtime and for pay in lieu of leave which the respondents said they were entitled to but were not given. The issue was whether the respondents were labourers in a guest house or domestic servants. On appeal by the employer through its secretary,

Held, allowing the appeal: it must be an inevitable conclusion that the guest-house of the appellant firm was not a public dwelling house but a private dwelling-house and that the respondents were domestic servants employed in a private dwelling-house. Their claim therefore must fail.

ORIGINATING MOTION.

N.J. Thakurdas for the applicant.

K. Chandra for the respondents.

Chang Min Tat J.: This is an appeal by the employer through its secretary from the decision of the Asst. Commissioner of Labour to allow the respondents' claim in full for overtime and for pay in lieu of leave which the respondents said they were entitled to but were not given. The respondents' claim was made under section 69 of the Employment Ordinance 1955. The issue was whether the respondents were or were not domestic servants. If they were not, then by statutory provision in section 58, they were not labourers entitled to the regulations for rest days, hours of work, holidays and other conditions of service in Part XII of the Ordinance.

There is no doubt that the respondents who are husband and wife first came into the employment of the appellant firm in answer to an advertisement for a cook and amah at No. 5 Jalan U Thant, Kuala Lumpur which the respondents admitted was a guest-house for the firm. They were interviewed by Mr. & Mrs. Davies. Mr. Davies was then the financial controller of the firm and both of them with their three children were staying in this guest-house. Though they claimed that their salaries were paid to them by Mr. & Mrs. Davies for the six weeks the Davies resided there, and later by a Mrs. Betty Tan, the Secretary, who succeeded them, there can equally be no doubt that the salaries were in fact paid by the firm, and that the respondents were employees of the firm. After the Davies, the occupants were transient guests, but they were all employees of the firm. The guests however had to pay for the food and drinks consumed by them at fixed rates.

On the evidence, it is just as clear that the character of their employment did not change. They continued to work as cook and amah. But the respondents claimed that after the departure of the Davies, the nature or the label of their employment had changed from personal domestic servants of the Davies to labourers in a house run as a guest-house, and they had thereby become labourers so as to come within the provisions of Part XII of the Ordinance.

The definition of "labourer" in the Ordinance is spelled out in the First Schedule and so far as it is relevant for the purposes of this case reads:

"Any person skilled or unskilled, other than a domestic servant, ... who has entered into a contract of service with an employer in pursuance of which he is engaged in manual labour...."

The Ordinance therefore excludes domestic servants from Part XII. But it is clear from the definition of domestic servant in the Ordinance, he must be a domestic servant in a private dwelling-house.

On the evidence led by the respondents, the Asst. Commissioner of Labour came to a finding that "a guest-house used by a business concern like the defendant company — to cater for the needs of its employees cannot be deemed to be a private dwelling-house as defined in the Employment Ordinance." For myself, I am unable to find anywhere in the Ordinance any definition of a private dwelling-house. It is therefore necessary to resort to first principles, but the matter is no nearer solution since apart from this finding, the Asst. Commissioner of Labour has given no reasoning. He could only be right if "private" refers strictly to an individual or a family as a basic unit. The question however is whether the unit extends to and includes a house such as the one in question run by the firm for the use of its transient employees. It is necessary to go back to the definition of domestic servant in the Ordinance. A domestic servant is defined as

"... a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use."

The definition is seen to be in two parts. The employment must be in a private-dwelling house and it must not be in connection with any trade, business or profession carried on by the employer in such dwelling-house. The second part is amply satisfied. No one can pos-